IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

NOTICE OF MOTION NO. 131 OF 2004.
IN
INSOLVECY NO.N/111 OF 2004.

Re: M/s Aryan Engineering
Co. & ors.. Judgment Debtors.
vs.
M/s Ahmed & Co... Judgment Creditors.

Mr. H.S. Thakkar for Judgment Debtor No.3.

Mr. R.H. Bhandari i/b Ms. J.P. Thakkar for Judgment Creditors.

CORAM : V.C.DAGA, J.

DATED : 21.2..2006.

P.C. :

. Heard.

2. This is a notice of motion taken out by the judgment Debtor No.3 for setting aside notice of insolvency.

3. The only ground canvassed was that the Judgment Debtors have preferred an appeal against the substantive decree; and the appeal is pending for admission. Mere filing of appeal without any order of stay from the appellate Court is of no consequence. Mere filing of appeal does not operate as stay of decree. In this view of the matter, the submission made is devoid of any substance.

4. At this stage, learned Counsel appearing for the judgment debtor NO.3 prayed for time to enable him to approach the appellate Court for interim relief. Time for this purpose was already granted. Therefore, prayer for granting time is rejected.

5. So far as merits of the submissions made are concerned, it is needless to mention that legality of the decree cannot be gone into in these proceedings. This Court cannot be go behind the decree.

6. In the above view of the matter, the Notice of Motion for setting aside insolvency notice is devoid of any substance. The same, thus, is rejected with no order as to costs.

(V.C.DAGA,J.)